

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

GEORGE T. MURDOCK, AS EXECUTOR of Jane H. Sherman, deceased, plain- tiff in error,	}	No. 458.
<i>v.</i> JOHN G. WARD, UNITED STATES COL- lector of internal revenue.		

GEORGE D. SHERMAN, PLAINTIFF IN error,	}	No. 459.
<i>v.</i> THE UNITED STATES.		

**BRIEF FOR THE UNITED STATES IN REPLY TO THAT OF EVARTS,
CHOATE & BEAMAN.**

I.

In the brief submitted for the holders of United States bonds by Evarts, Choate & Beaman attention is called to the refunding act of July 14, 1870 (16 Stat., 272), the resumption act of January 14, 1875 (18 Stat., 296), and the war-revenue act of 1898 (30 Stat., 467; sec. 33), under which the outstanding bonds of the Gov-

ernment were issued. The exemption clause of the refunding act of July 14, 1870, reads as follows :

All of which several classes of bonds and the interest thereon shall be exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority ; and the said bonds shall have set forth and expressed upon their face the above-specified conditions.

The resumption act of January 14, 1875, provides that the bonds authorized by it shall be issued with a like exemption.

The war-revenue act of 1898 contains the following provision :

And the bonds herein authorized shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority.

All the bonds issued under these acts contain on their face the following exemption :

The principal and interest are exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority.

It is insisted, indeed elaborately argued—

That the exemption operated as an inducement to investors to take the bonds at an exceptionally low rate of interest ;

That the exemption was incorporated into the bonds and became a contract between the Government and their holders ;

That this contract extends to the assigns of the hold-

ers, and to all assigns, those by operation of law as well as by act of the holders, thus assuring the benefit of the exemption to those who take by will or by the intestate laws of a State as well as those who take by transfer from the holder during life;

That the exemption is not only from the payment of taxes, but of *duties* of the United States, thus bringing this exaction, which is a "duty," within the express language of the clause.

II.

In the original brief filed by Mr. Patterson, who first raised, or attempted to raise, the question respecting the exemption of United States bonds, reference was made to section 3701, Revised Statutes, providing for the exemption of United States bonds from taxation by or under State, municipal, or local authority, but to no other statutory provision respecting exemption. Mr. Patterson appeared to concede there was no law exempting the outstanding United States bonds from Federal taxation, and based his argument for exemption upon the general ground that to exact the duty would amount to a dishonorable attempt on the part of the Government to escape the full payment of its lawful obligations and to the extent of the tax be a virtual repudiation of the promise to pay under the bonds. Naturally, in answering Mr. Patterson in my additional brief of December 13, 1899, I limited my argument to the claim made. He urged no statutory exemption, but a moral obligation. Discussing this I said I could not see why the United States might not tax

property invested in its own bonds; that it was a question of public policy; and assuming he had examined the statutes bearing upon the matter and stated them fully, I said the Government had never agreed, so far as I knew, not to tax property invested in its own bonds. At the same time, I pointed out that the Government has right along expressly prohibited the taxation of its bonds by any State, or municipality or local authority, and yet, nevertheless, the States have invariably computed inheritance taxes upon the portions of estates invested in United States bonds. They have done this because an inheritance tax is not a tax on property but on a privilege, the property being simply used as a means of ascertaining the value of the privilege taxed.

Now that my attention has been called to the provisions of the refunding act of 1870 and the subsequent statutes cited, I cheerfully concede that the law does provide for the exemption of the outstanding bonds of the United States and the interest thereon from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority; but I submit that this statutory exemption does not change the situation nor affect the force of the argument already made on behalf of the Government.

III.

Before discussing this question of exemption I want to point out that no case properly presenting it is before the court. I believe a careful examination of the records in the Murdock and Sherman cases, Nos. 458 and 459, will lead to the conclusion that no decision is at present

required upon the question argued. Pages of elaborate discussion are submitted by counsel upon the question whether United States bonds which pass, either by will or by intestate laws, from a testator or intestate to his legatee or distributee are subject to this tax or duty, and yet no case presenting an instance of such passage or transmission is before the court.

Cases Nos. 458 and 459 present the same facts. Jane H. Sherman died possessed of a personal estate of the value of \$1,233,571. It is averred in each case that a considerable portion of this estate, at least one-third, consisted of United States bonds. She left a will, a copy of which appears in the record in No. 459, pages 4 to 11. This will contains a number of bequests of money. It contains no bequest of bonds. The executors were given authority to sell and dispose of the estate at public or private sale. In neither case is it averred that any specific bequest was made of any United States bonds owned by the testatrix at the time of her death. The only averment with respect to such bonds is that about one-third of the estate was invested in them at the time of her death.

Now, these are cases, not where United States bonds have passed from the testatrix to her legatees, but where a personal estate of a certain value in money has passed to the executors to be charged against them as money, to be turned into money, and to be distributed among the beneficiaries as provided by the will.

The court must pass upon the case presented in the record. The only averment is that the testatrix died possessed of an estate of which one-third consisted of

United States bonds. There the case stops. There is no allegation that these bonds have passed by the will to the legatees, or any of them. For aught that appears in the record, the executor and trustee may have sold every bond, may have distributed a portion of the proceeds in money among the legatees, and have invested the balance under the residuary clause in taxable securities. But if the bonds were not sold, and if a legatee entitled to a certain sum of money should accept United States bonds in lieu of money, this would be a matter of agreement between the legatee and the executor. The bonds would not be accepted and taken as bonds, but as the equivalent of money. In other words, the legatee would take not under the will but as a purchaser. This is pointed out in the opinion of Judge Butler, approved by the supreme court of Pennsylvania, in the leading case of *Strode v. Commonwealth*. (52 Pa. St., 181, 183.)

I have thus far treated the question as if the distribution was to be of the bonds. But in the case before us, as in all cases of general legacies and intestacy, this is not so. The law contemplates the reduction of the estate to money. It is as for money the administrator accounts, and it is only for money he can be compelled to account for distribution. The distributees can not be required to accept anything else. If the estate consists of ordinary bonds, they are collected; if of public bonds, they are sold in the market like other chattels of the deceased. Frequently, it is true, by an arrangement with the distributees, bonds and other securities are transferred to them in the stead of money, and equity might interfere to prevent a sale of such securities where the distributees offer to take them,

and a sale is unnecessary. But in such cases the distributees take from the administrator or executor, as any other transferee would, and must be regarded as purchasers. They agree to accept the bonds instead of the money to which they are entitled. It is, in effect, an investment of their shares in these securities.

If, therefore, the "collateral inheritance tax" could be regarded as a burden imposed on property belonging to the distributees, it would not be on the *bonds*, but on the *money* before it was thus invested.

IV.

It is insisted that the exemption clause in the refunding act of 1870 was inserted as an inducement to the investors to take the Government bonds at the exceptionally low rate of 4 per cent, and because of it they were purchased at 4 per cent. I suppose we may concede that the exemption clause was intended to have and did have some effect, but certainly not that claimed by counsel. The bonds were placed at a lower rate of interest because of the increase of wealth and the stability of the investment. This exemption clause has been in the law and the bonds ever since 1870 and the reduction of interest has gone on. The natural causes to which I allude have reduced the rate as much since then as it is claimed the exemption did at that time. There was an enormous demand for the 3 per cent loan placed in 1898, and the bonds then issued are now selling at a premium of 10 per cent. An examination of the current quotations in the New York papers will satisfy anyone that what I have mentioned are the controlling factors in deter-

mining the price of bonds, and therefore the rate of interest that must be paid. The $3\frac{1}{2}$ per cent bonds of the New York Central and Hudson River Railroad are not exempt from taxation, either State or Federal, and yet yesterday they sold at 99; the New York, Ontario and Western fours sold at 106; and the Pittsburg, Cincinnati, Chicago and St. Louis four-and-a-halves at $115\frac{1}{2}$. Counsel insist that the outstanding Government bonds were purchased in the belief that they would be exempt from a legacy tax should the Government see fit to impose one. Counsel insist that the bondholders still believe they are under the law so exempt. If so, and if this supposed exemption amounts to anything, then a decision that they are not exempt should and would affect their price. Yet I venture to say that the decision of this court sustaining the contention of the Government with respect to the bonds will not affect their price in the market the fractional part of a cent. British consols are not exempt from taxation, yet consider the low rate at which they have been placed.

V.

There is another reason why, as I contend, the alleged supposed exemption of United States bonds from a possible inheritance tax did not operate as an inducement to investors to take them, and had no effect whatever upon their price or the rate of interest at which they were placed. Prior to the passage of the refunding act of 1870, inheritance taxes had been levied, both by the States and the Federal Government. The Constitution, as interpreted by this court, forbade any State to tax in any manner the bonds of the United States, and this ex-

emption was incorporated into section 3701 of the Revised Statutes. Yet, notwithstanding this constitutional and statutory exemption, the States prior to 1870 and ever since have computed their inheritance taxes upon the portion of estates invested in United States bonds. Investors knew that the exemption from State and local taxation did not apply to a State inheritance tax; why should they believe that the exemption from Federal taxation would include a Federal inheritance tax? I deny there was any intention on the part of Congress, by inserting the exemption clause in the refunding act, to exempt the portion of an estate invested in United States bonds from either a State or Federal inheritance tax. There was doubtless the intention to exempt the bonds from any Federal tax, direct or indirect, levied upon the bonds, their income or any legal incident. Such a tax or duty (upon the income) had been levied and, I dare say, was intended to be prohibited by the exemption clause.

VI.

It is urged that the exemption clause was incorporated into the bonds and became a subsisting contract between the Government and their holders. I concede this. It is further contended that this contract extends to the assigns of the holders. I concede this, too. It is finally insisted that assigns must be taken to include all assigns, those by operation of law as well as by the act of the owner, thus including legatees and distributees. I do not concede this. Ownership includes power of disposition, but this is power of disposition during life. It has never been held, as a matter of common right, that because a man owned a thing he could dispose of it after

his death. If the ownership of property carried with it, as a matter of common right, the power to dispose of it after death, there would be no privilege of succession or inheritance to tax. Transmission by will or by law is therefore not an incident of property. Disposition after death is a privilege, not a right; it does not inhere in and attach to the bonds, and is therefore not covered by the exemption clause.

VII.

Counsel, citing cases, say that a tax upon all sales of property is a tax upon the property itself, and therefore a tax upon the succession or devolution of property is a tax upon the property itself. This is treating a transfer after death as the equivalent of a transfer during life. Such is not the law. The power of disposition during life is an incident of property, but power to dispose of it after death is a privilege conferred by the State. The first may not be taxed without taxing the property, but the second can be taxed as a privilege not incident to property. I ought to qualify the statement that a tax upon sales of property is a tax upon the property by stating that to make it such, the tax must be upon *all* sales of property. If you can't sell your property without paying a tax, of course your property is subject to a burden; there is a tax laid on it. But suppose the tax is only upon *certain* sales of property, sales taking place under peculiar circumstances, where a special privilege is enjoyed in making the sale. In that case the tax is not a tax upon the sale, or upon the property sold, but upon the privilege enjoyed in making the sale. Such is the case of *Nicol v. Ames*. The war-revenue act levied a tax "upon each sale, agree-

ment of sale, or agreement to sell, any products or merchandise at any exchange, or board of trade, or other similar place." The court held, however, that this tax was not one upon the sale, or upon the property sold, but upon the privilege or facility enjoyed in making the sale at an exchange or board of trade. So in the case at bar. In disposing of property after death, a peculiar privilege is involved. This privilege is sufficient to separate this transfer from all other transfers and make the tax one upon its distinguishing characteristic, the privilege itself, so the tax is not one upon the property which passes, but upon the privilege involved in the passage.

VIII.

Suppose the bonds do pass from the testator to his legatee. Did the owner, when he bought them, buy the right to thus transfer them? He did not. He acquired by purchase no such right. The State conferred the right, it granted the privilege, and so created a new subject-matter of taxation. In taxing this privilege, in ascertaining the contribution to be made because of its enjoyment, certain facts must be considered. The entire value of the estate is one, the value of the legacy or share is another, and the kinship of the legatee or distributee a third. These things are used as a means of measuring the value of the privilege enjoyed. But the property composing the estate, or the legacy, is no more taxed than is the degree of kinship of the legatee.

IX.

Counsel contend that the exemption is not only from the payment of taxes but of duties of the United States;

that the tax on legacies is a duty, and therefore comes within the express language of the law. I concede this exaction is a duty. I have so contended. But I do not concede that it is a duty upon the bonds. If it were a tax direct or indirect upon the bonds, then it would violate the exemption provision. It is begging the question to say that because it is a duty it is an indirect tax upon the bonds. The bonds are property. This is not a tax upon property either direct or indirect. It can not be sustained as a tax upon property. It is a tax upon a privilege which does not inhere in property, which is not an incident of property, which, it is true, is enjoyed with respect to property, but which, after all, is a privilege conferred by government and enjoyed under its protection, and consequently may be and is taxed as such.

X.

For the convenience of the court, and as a practical refutation of the charge, so vigorously pressed, that because of its graded feature the act is unequal, unjust, socialistic, and dangerous, I have taken the trouble to collect and print in the appendix an abstract of the inheritance tax laws of the United Kingdom and the British possessions throughout the world. The graded feature is adopted practically everywhere as a wise and fair provision. That Congress lacked power to adopt and enforce it here is inconceivable. The Government created by the Constitution is not so impotent.

JOHN K. RICHARDS,
Solicitor-General.

JANUARY 27, 1900.

APPENDIX.

IN THE UNITED KINGDOM.

LEGACY AND SUCCESSION DUTIES.

(Whitaker's Almanack, 1900, p. 432.)

If the deceased died on or after the 1st June, 1881, every pecuniary legacy or residue, or share of residue, although not of the amount or value of £20, is chargeable with duty by the 44 Vict., c. 12, s. 42, except in the cases of small estates.

No succession duty is payable where the principal value of all the successions on the same death does not amount to £100 (16 and 17 Vict., c. 51, s. 18).

Rates of duties payable on legacies, annuities, and residues (£1 per cent legacy duty practically abolished since 1881), and of succession duties where deceased died before 1st July, 1888, or where estate duty, finance act, 1894, is payable (in which latter case 1 per cent is also practically abolished).

To children of the deceased, or their descendants, or to the father or mother or other lineal ancestor of the deceased, £1 per cent.

To brothers and sisters of the deceased, or their descendants, £3 per cent.

To brothers and sisters of the father or mother of the deceased, or their descendants, £5 per cent.

To brothers and sisters of the grandfather or grandmother of the deceased, or their descendants, £6 per cent.

To any person in any other degree of collateral consanguinity, or to a stranger in blood to the deceased, £10 per cent.

Where deceased died on or after 1 July, 1888, and probate or estate duty is not payable, succession duties for the relationships above are at rates of $1\frac{1}{2}$, $4\frac{1}{2}$, $6\frac{1}{2}$, $7\frac{1}{2}$, and $11\frac{1}{2}$, respectively.

The husband or wife is chargeable with estate duty, but not legacy or succession duty, and the husband or wife of a relation is chargeable at the rate at which the relation would be charged.

Penalties.—Persons paying or receiving any legacy, residue, or share of residue liable to duty, without taking or signing the proper receipt for the same. Persons not giving notice of a succession, or not delivering an account, are subject to certain penalties.

ESTATE DUTY.

(Whitaker's Almanack, 1900, pp. 430, 431.)

In the case of every person dying after 1st August, 1894 (prior to which date probate, affidavit, or inventory duty is payable), where the principal value of all property, real or personal, settled or not settled, passing on the death of such person, exceeds :

	Per cent.	
	£	s.
£100 and does not exceed £500.....	1	0
£500 and does not exceed £1,000.....	2	0
£1,000 and does not exceed £10,000.....	3	0
£10,000 and does not exceed £25,000.....	4	0
£25,000 and does not exceed £50,000.....	4	10
£50,000 and does not exceed £75,000.....	5	0
£75,000 and does not exceed £100,000.....	5	10
£100,000 and does not exceed £150,000.....	6	0
£150,000 and does not exceed £250,000.....	6	10
£250,000 and does not exceed £500,000.....	7	0
£500,000 and does not exceed £1,000,000.....	7	10
£1,000,000	8	

In calculating the duty the net value of an estate where the death occurred between 2d August, 1894, and 30th June, 1896, is raised to the next complete £10; and on deaths after that date any fraction of £100 is ignored, such adjusted value determining both the rate and amount of duty.

Gifts made by the deceased within a twelvemonth of death are subject to aggregation with the rest of the estate.

In addition to the above, where property liable to estate duty is settled by the will of the deceased, or having been settled by some other disposition passes under that disposition, on the death of the deceased, to some person not competent to dispose thereof, a further duty is payable at the rate of £1 per cent on the settled property, but from that payment the *ad val.* stamp duty charged on the settlement may be deducted.

But where the net value of the property, real and personal, does not exceed £1,000, estate duty only is payable and the property is exempt from settlement estate duty and from legacy or succession duties.

Small estates up to £300 and £500 gross are charged, at the option of the accounting parties, either by the preceding scale or with fixed duties of 30s. and 50s., and are exempt from all other death duties.

Where the net value exceeds £100, but does not exceed £200, the *ad valorem* duty amounts to £1 only, provided that the death occurred on or after 1st July, 1896.

Interest at 3 per cent per annum is also payable on the estate duty on personalty from the date of the death up to that of delivery of the affidavit or account.

The estate duty on real property may be paid, if desired, by eight yearly or sixteen half-yearly installments, and that on certain annuities may, at option, be paid in four yearly installments, and 3 per cent interest is charged on all unpaid portions of duty in these cases from twelve months after death.

AUSTRALASIA.

NEW SOUTH WALES.

(Hanson's Death Duties, Fourth Edition, p. 717.)

The stamp duties act, 1880, 1886, 1894.

The duty is imposed on the estate of the deceased person, including his real estate in the colony.

The rates of duty are:

On the probate or letters of administration, to be granted in respect of any estate, real or personal, of any deceased person.

	Rate of duty per centum.
Where the value of such estate is under £200	Nil.
Where the value of such estate exceeds £200, and is under £5,000	1
Where the value of such estate exceeds £5,000, and is under £12,500	2
Where the value of such estate exceeds £12,500, and is under £25,000	3
Where the value of such estate exceeds £25,000, and is under £50,000	4
Where the value of such estate exceeds £50,000	5

NEW ZEALAND.

(Hanson, p. 718.)

The deceased persons' estates duties act, 1881, 1885, 1886.

The duty is in the nature of an estate duty, and is imposed on all real and personal property situate in New Zealand, including all debts, moneys, and choses in action receivable or recoverable in the said colony, the property of the deceased and which shall become vested in the administrator as such, notwithstanding that the deceased had a foreign domicile.

The duty is apportioned ratably on the property.

No duty is payable on property passing to the widow, and one-half of the duty payable on property passing to children or grandchildren of the deceased is remitted.

	Rate of duty, per cent.
Estate under £100.....	Nil.
Estate exceeding £100, but not exceeding £1,000.....	1 on first £100, 2½ on re- mainder.
Estate exceeding £1,000, but not exceeding £5,000....	3½
Estate exceeding £5,000, but not exceeding £20,000....	7
Estate exceeding £20,000.....	10

Strangers in blood (except adopted children), 3 per cent additional to the above rates.

QUEENSLAND.

(Hanson, p. 719.)

The succession and probate duties act, 1892, 1895.

This act imposes two duties, a probate and a succession duty.

This duty is chargeable on all property in Queensland whatever the domicile of the deceased.

Duty is payable on the grant of probate as follows (the duty on letters of administration being at double the rates for probate):

	Rate of duty per centum.
When the net value of the property of the deceased person in respect of which the grant of probate or letters of administration is made does not exceed £50.....	Nil.
Exceeds £50, but does not exceed £100.....	10s.
Exceeds £100, but does not exceed £200.....	£1
Exceeds £200, but does not exceed £500.....	£2
Exceeds £500.....	£5

The enactment, so far as it^s deals with succession duty, is modeled on the English succession duty act, the greater

portion of that act being reproduced verbatim. The duty is imposed on both real and personal property on a graduated scale, thus:

	Rate of duty, per cent.
If the whole succession or successions derived from the same predecessor and passing on the death of any person or persons amount in money or principal value to a sum less than £200.....	Nil.
Exceeding £200, but not exceeding £1,000	2
Exceeding £1,000, but not exceeding £2,500.....	3
Exceeding £2,500, but not exceeding £5,000.....	4
Exceeding £5,000, but not exceeding £10,000.....	6
Exceeding £10,000, but not exceeding £20,000.....	8
Exceeding £20,000.....	10

The wife, husband, or lineal issue of the predecessor pay at one-half the above rates, and a stranger in blood at double the above rates.

SOUTH AUSTRALIA.

(Hanson, p. 720.)

The succession duties act, 1893.

The duty is a succession duty and is imposed on property derived from a deceased person in so far as the property comprises, or is portion of, or payable out of:

- (a) Real property of the deceased in the province.
- (b) His personal property, wherever situate, if deceased was domiciled in the province at his death.
- (c) If the domicile of the deceased was foreign, his personal property in the province, including debts, money, and choses in action, receivable or recoverable by the administrator in the said province.

But all duty lawfully paid in any place out of the province in respect of property being out of the province and derived from any deceased person may be deducted from the duty to which the same property is liable under this act.

Rate of duty
per centum.

A. Where the net present value of property passing to any widow, widower, descendant, or ancestor of the deceased person or settlor or donor—

Exceeds £500 and does not exceed £700.....	a 1½
Exceeds £700 and does not exceed £1,000.....	a 2
Exceeds £1,000 and does not exceed £2,000.....	a 3
Exceeds £2,000 and does not exceed £3,000.....	3½
Exceeds £3,000 and does not exceed £7,000.....	4
Exceeds £7,000 and does not exceed £10,000.....	4½
Exceeds £10,000 and does not exceed £15,000.....	5
Exceeds £15,000 and does not exceed £20,000.....	5½
Exceeds £20,000 and does not exceed £30,000.....	6
Exceeds £30,000 and does not exceed £40,000.....	6½
Exceeds £40,000 and does not exceed £60,000.....	7½
Exceeds £60,000 and does not exceed £80,000.....	8
Exceeds £80,000 and does not exceed £100,000.....	8½
Exceeds £100,000 and does not exceed £150,000.....	9
Exceeds £150,000 and does not exceed £200,000.....	9½
Exceeds £200,000.....	10

B. Where the net present value of the property passing to a brother, sister, descendant of brother or sister, or any person in any other degree of collateral consanguinity to the deceased person, donor, or settlor does not exceed £200

Exceeds £200 but does not exceed £300	1½
Exceeds £300 but does not exceed £400	2
Exceeds £400 but does not exceed £700	3
Exceeds £700 but does not exceed £1,000	3½
Exceeds £1,000 but does not exceed £2,000.....	4
Exceeds £2,000 but does not exceed £3,000.....	5
Exceeds £3,000 but does not exceed £5,000.....	6
Exceeds £5,000 but does not exceed £10,000.....	7
Exceeds £10,000 but does not exceed £15,000.....	8
Exceeds £15,000 but does not exceed £20,000.....	9
Exceeds £20,000.....	10

A stranger in blood pays at the rate of 10 per cent in all cases.

TASMANIA.

(Hanson, p. 722.)

Probate duties act.

The duty is a probate duty, imposed on the net personal estate of the deceased; estates under £100 are

a Widow, or child under 21, pays half these rates.

exempt; duty at the rate of 2 per cent is payable on estates under £500, and at the rate of 3 per cent on estates over £500.

No duty is payable on "the amount received under any policy on the life of any deceased person, where, at the time of his decease, the same was held by him, or was held by trustees for such person, or for the wife or child of any such person."

VICTORIA.

(Hanson, p. 722.)

Administration and probate act, 1890, 1892.

The duty is payable on the value of the real and personal estate of the deceased, after deducting debts, and where a grant of probate or administration is limited to any special property the duty is payable on the value of that property after deducting the amount of any mortgages, charges, or liens thereon.

The rates of duty are as follows:

	Rate of duty per centum.
Value of estate does not exceed £1,000.....	nil.
Exceeds £1,000, but does not exceed £5,000.....	2
Exceeds £5,000, but does not exceed £6,000.....	3
Exceeds £6,000, but does not exceed £7,000.....	3½
Exceeds £7,000, but does not exceed £8,000.....	3½
Exceeds £8,000, but does not exceed £9,000.....	3½
Exceeds £9,000, but does not exceed £10,000.....	3½
Exceeds £10,000, but does not exceed £12,000.....	4
Exceeds £12,000, but does not exceed £14,000.....	4½
Exceeds £14,000, but does not exceed £16,000.....	4½
Exceeds £16,000, but does not exceed £18,000.....	4½
Exceeds £18,000, but does not exceed £20,000.....	5
Exceeds £20,000, but does not exceed £22,000.....	5½
Exceeds £22,000, but does not exceed £24,000.....	5½
Exceeds £24,000, but does not exceed £26,000.....	5½
Exceeds £26,000, but does not exceed £28,000.....	5½
Exceeds £28,000, but does not exceed £30,000.....	5½
Exceeds £30,000, but does not exceed £32,000.....	6

	Rate of duty per centum.
Exceeds £32,000, but does not exceed £34,000	6½
Exceeds £34,000, but does not exceed £36,000	6½
Exceeds £36,000, but does not exceed £38,000	6½
Exceeds £38,000, but does not exceed £40,000	6½
Exceeds £40,000, but does not exceed £44,000	7½
Exceeds £44,000, but does not exceed £48,000	7½
Exceeds £48,000, but does not exceed £52,000	7½
Exceeds £52,000, but does not exceed £56,000	7½
Exceeds £56,000, but does not exceed £60,000	7
Exceeds £60,000, but does not exceed £64,000	8
Exceeds £64,000, but does not exceed £68,000	8½
Exceeds £68,000, but does not exceed £72,000	8½
Exceeds £72,000, but does not exceed £76,000	8½
Exceeds £76,000, but does not exceed £80,000	8½
Exceeds £80,000, but does not exceed £84,000	9
Exceeds £84,000, but does not exceed £88,000	9½
Exceeds £88,000, but does not exceed £92,000	9½
Exceeds £92,000, but does not exceed £96,000	9½
Exceeds £96,000, but does not exceed £100,000	9½
Exceeds £100,000	10

WESTERN AUSTRALIA.

(Hanson, p. 724.)

The duty on deceased persons' estates act.

This act imposes a duty in the nature of an estate duty on the property, real and personal, comprised in any grant of probate or letters of administration, and upon the property comprised in any settlement containing trusts or dispositions to take effect after the death of the settlor (other than an antenuptial settlement, a post-nuptial settlement made in pursuance of an antenuptial agreement, a settlement on the wife or children of the settlor of property coming to him *jure uxoris*, or a settlement in favor of a purchaser or incumbrancer in good faith and for valuable consideration). All such voluntary settlements have to be registered within two months of the death of the settlor.

I. An estate under the value of £1,500.

II. The first £1,500 in an estate under the value of £2,500.

III. On property passing to parent, issue, husband, wife, or issue of husband or wife, one-half the ordinary rates of duty are payable.

	Rate of duty per centum.
Estate under £1,500	1 on excess above £500.
Exceeds £1,500, but does not exceed £5,000...	2 on whole value.
Exceeds £5,000, but does not exceed £10,000..	3 on whole value.
Exceeds £10,000, but does not exceed £20,000.	4 on whole value.
Exceeds £20,000, but does not exceed £30,000.	5 on whole value.
Exceeds £30,000, but does not exceed £40,000.	6 on whole value.
Exceeds £40,000, but does not exceed £60,000.	7 on whole value.
Exceeds £60,000, but does not exceed £80,000.	8 on whole value.
Exceeds £80,000, but does not exceed £100,000.	9 on whole value.
Exceeds £100,000.....	10 on whole value.

CANADA:

ONTARIO.

(Hanson, p. 725.)

The succession duty act, 1892. An act to make further provision for the payment of succession duty, etc.

The act does not apply—

(1) To any estate the value of which, after payment of all debts and expenses of administration, does not exceed \$10,000.

(2) To property given, devised, or bequeathed for religious, charitable, or educational purposes.

(3) To property passing under a will, intestacy, or otherwise, to or for the use of the father, mother, husband, wife, child, grandchild, daughter-in-law or son-in-law of the deceased, where the aggregate value of the property of the deceased does not exceed \$100,000, and

(4) Where the value of the property devised, be-

queathed, or passing to any one person under a will or intestacy, does not exceed \$200, the same is exempt from duty.

A. Where the property of the deceased passes, either in whole or in part, to or for the benefit of the father, mother, husband, wife, child, grandchild, or other lineal descendant, daughter-in-law or son-in-law of the deceased, the same, or so much thereof as so passes, shall be subject, where aggregate value of the property of the deceased exceeds \$100,000, to duty at the rate of 2½ per cent; exceeds \$200,000, to duty at the rate of 5 per cent.

B. Where the property of the deceased exceeds \$10,000, so much thereof as passes to or for the benefit of the grandfather or grandmother, or any other lineal ancestor except the father or mother of the deceased, or to any brother or sister of the deceased, or to any descendants of such brother or sister, or to a brother or sister of the father or mother of the deceased, or any descendants of such last-named brother or sister, to duty at the rate of 5 per cent. Any person in any other degree of collateral consanguinity to the deceased or any stranger in blood, to duty at the rate of 10 per cent.

QUEBEC.

(Hanson, p. 726.)

An act respecting duties on successions and transfers of property.

"All transmissions, owing to death, of the property in usufruct or enjoyment of movable and immovable property" shall be liable to the following taxes, calculated

on the value of the property transmitted after deducting debts and charges existing at the time of the death:

Successor.	Value of estate.	Rate of duty per centum.
In the direct line, ascending or descending, consorts, father or mother in law, or son or daughter in law of the deceased.	Does not exceed \$3,000	Nil
	Exceeds \$3,000, but does not exceed \$5,000	a $\frac{1}{2}$
	Exceeds \$5,000, but does not exceed \$10,000	a 1
	Exceeds \$10,000, but does not exceed \$50,000 ..	a 1 $\frac{1}{2}$
	Exceeds \$50,000, but does not exceed \$100,000 .	a 1 $\frac{3}{4}$
	Exceeds \$100,000, but does not exceed \$200,000 .	a 2
Brother or sister or descendant of brother or sister of the deceased.	Exceeds \$200,000	a 3
	In all cases	3
Brother or sister or descendant of brother or sister of the father or mother of the deceased person.	In all cases	5
Brother or sister or descendant of brother or sister of the grandparents of the deceased.	In all cases	6
Any other collateral relative.	In all cases	8
Stranger	In all cases	10

a On the excess beyond \$3,000.

NEW BRUNSWICK.

(Hanson, p. 727.)

The succession duty act, 1892.

The acts are almost identical in drafting with the Ontario statutes.

The duty is a succession duty, and is imposed in precisely the same terms as those used in Ontario (*supra*, p. 725), and by a declaratory act (57 Viet., c. 6) it is explained that, in the case of a person who at the time of his death was an *inhabitant* of the province, the duties are payable on all his property, whether situate in the province or elsewhere.

(1) Any estate the value of which, after paying all debts and expenses of administration, does not exceed \$5,000.

(2) Property given, devised, or bequeathed for religious, charitable, or educational purposes.

(3) Property passing, under a will, intestacy, or otherwise, to or for the use of the father, mother, husband, wife, child,¹ daughter-in-law, or son-in-law of the deceased, when the aggregate value of the property of the deceased does not exceed \$50,000 in value; and

(4) Where the whole value of any property devised, bequeathed, or passing to any one person under a will or intestacy does not exceed \$200 the same is exempt from duty.

Rate of duty
per centum.

A. When the property of the deceased passes either in whole or in part to or for the benefit of the father, mother, husband, wife, child, brother, sister, daughter-in-law, or son-in-law of the deceased, the same, or so much thereof as so passes, shall be subject—

When the aggregate value of the property of the deceased exceeds \$50,000

1½ on the
first
\$50,000,
2½ on
remain-
der.

Exceeds \$200,000

5

B. Where the property of the deceased exceeds \$10,000, so much thereof as passes to or for the benefit of the grandfather or grandmother of the deceased, or any other lineal ancestor of the deceased, except the father and mother, or to any descendant of a brother or sister of the deceased, or to any brother or sister of a father or mother of the deceased, or any descendant of such last-named brother or sister

5

C. Where the property of the deceased exceeds \$5,000, so much thereof as passes to or for the benefit of any person in any other degree of collateral consanguinity, or to a stranger in blood

10

¹ Apparently no duty is payable in respect of property passing to the grandchildren or remoter issue of the deceased. The words "brother or sister" appear to have been accidentally omitted here.

Where the property of a deceased person liable to duty, or any part thereof, or any legacy or annuity out of the same goes to any person residing out of the province, the duty payable on the amount or portion going to such person is to be at double the above rates.

NOVA SCOTIA.

(Hanson, p. 728.)

The succession duty act, 1895.

This act is very similar to the Ontario act and the duty is imposed in the same terms as those used in that act, with the addition of the following words: "And all property, wheresoever situate or being, over which the executor or administrator shall or may exercise control, and which shall or may at any time come into his possession."

The act does not apply—

(1) To any estate the value of which, after payment of debts and expenses of administration, does not exceed \$5,000;

(2) To property passing, under a will, intestacy, or otherwise, to or for the benefit of the father, mother, husband, wife, child, grandchild,¹ brother, sister, daughter-in-law, or son-in-law, of the deceased, where the value of the property of the deceased, after payment of all debts and expenses of administration, does not exceed \$25,000 in value; and

(3) Where the whole value of any property devised, bequeathed, or passing to any one person under a will or intestacy does not exceed \$200, the same shall be exempt from duty.

A. Where the property of the deceased passes, either wholly or in part, to or for the benefit of the father,

¹ Apparently no duty is payable in respect of property passing to remoter issue of the deceased.

mother, husband, wife, child, grandchild, brother, sister, daughter-in-law, or son-in-law of the deceased, the same, or so much thereof as so passes, shall be subject to:

	Rate of duty per centum.
Where the aggregate value of the property of the deceased exceeds \$25,000.....	2½ on the excess above \$25,000
Where the aggregate value of the property of the deceased exceeds \$100,000.....	5 on the whole amount so passing

B. Where the property of the deceased exceeds \$5,000, so much thereof as passes to or for the benefit of:

	Rate of duty per centum.
The grandfather or grandmother of the deceased, or any other lineal ancestor of the deceased, except the father and mother, or to any descendant of a brother or sister of the deceased, or to a brother or sister of the father or mother of the deceased, or any descendants of such last-named brother or sister.....	5
Any other person in any other degree of collateral consanguinity to the deceased, or to a stranger in blood, save as aforesaid	10

Section 15 provides for the mode of payment of duty on annuities and section 16 for the mode of payment of duty on property limited by way of succession.

PRINCE EDWARD ISLAND.

(Hanson, p. 729.)

An act to provide for the payment of succession duty.

The act is similar to the Nova Scotia act, and the duty is imposed on similar terms to those used in that act.

The act does not apply—

(1) To any estate the value of which, after payment of all debts and expenses of administration, does not exceed \$3,000.

(2) To property given, devised, or bequeathed for religious, charitable, or educational purposes within the province.

(3) To property passing under a will, intestacy, or otherwise to or for the father, mother, husband, wife, child, grandchild, brother, sister, brother's child or sister's child, daughter-in-law, or son-in-law of the deceased, where the value of the property of the deceased, after payment of all debts and expenses of administration, does not exceed \$10,000 in value.

A. Where the property of the deceased passes, either wholly or in part, to or for the father, mother, husband, wife, child, grandchild, brother, sister, brother's child, or sister's child, daughter-in-law, or son-in-law of the deceased, the same, or so much thereof as so passes, shall be subject :

	Rate of duty per centum.
Where the value of the property of the deceased, after payment of all debts and expenses aforesaid, exceeds \$10,000	1½
Exceeds \$50,000.....	2½

B. Where the value of the property, after payment as aforesaid, exceeds \$3,000, so much thereof as passes to or for :

	Rate of duty per centum.
The grandfather or grandmother or any lineal ancestor of the deceased, except the father and mother, or to a brother or sister of the father or mother of the deceased, or any descendants of such last-mentioned brother or sister	2½
Any person in other degree of collateral consanguinity, or any stranger in blood, save as aforesaid	7½

Foreign administrations.—This act contains a section identical with that of Nova Scotia act on this subject.

BRITISH COLUMBIA.

(Hanson, p. 730.)

The succession duty act, 1894.

The duty is imposed in the same terms as in the Ontario act.

The act does not apply :

(1) To any estate the value¹ of which does not exceed \$5,000.

(2) To property passing, under a will, intestacy, or otherwise, to or for the use of the father, mother, husband, wife, child, grandchild, daughter-in-law, or son-in-law of the deceased, where the aggregate value of the property of the deceased does not exceed \$25,000 :

	Rate of duty per centum.
Upon the value up to \$100,000.....	1
Where said value reaches \$100,000, but does not reach \$200,000	2
Where said value reaches \$200,000, but does not reach \$700,000	3
Where said value reaches \$700,000, but does not reach \$1,000,000.....	4
Where said value reaches \$1,000,000 or more	5

Provided that, subject to the preceding exemption (2) all the property in an estate exceeding \$25,000 that passes to or for the use of any one person, being the father, mother, husband, wife, child, grandchild, daughter-in-law, or son-in-law of the deceased, under a will or intestacy, the first \$5,000 of the value of the same shall be exempt from payment of duty, and upon the excess above \$5,000 duty shall be charged at one-half the several aforesaid rates.

¹ Defined as meaning "fair market value after payment of the expenses of administration and all just debts and liabilities."

MANITOBA.

(Hanson, p. 731).

The succession duty act, 1893.

The duty is imposed in the same terms as those employed in the Ontario act.

The act does not apply—

(1) To any estate the value of which, after payment of all debts and expenses of administration, does not exceed \$4,000.

(2) To property passing under a will, intestacy, or otherwise to or for the use of the father, mother, husband, child, wife, grandchild, daughter-in-law, or son-in-law of the deceased, or one or more of such persons, where the value of the property so passing does not exceed \$25,000.

Value of property liable to duty.	Rate of duty per cent.
Up to \$25,000	1
Reaches \$25,000, but does not reach \$50,000	2
Reaches \$50,000, but does not reach \$100,000	3
Reaches \$100,000, but does not reach \$250,000	4
Reaches \$250,000, but does not reach \$500,000	5
Reaches \$500,000, but does not reach \$600,000	6
Reaches \$600,000, but does not reach \$700,000	7
Reaches \$700,000, but does not reach \$800,000	8
Reaches \$800,000, but does not reach \$900,000	9
Reaches \$900,000, but does not reach \$1,000,000	10
Reaches \$1,000,000 or more	10

Provided that where the whole value of any property devised, bequeathed, or passing to any one person, being the father, mother, husband, wife, child, grandchild, daughter-in-law, or son-in-law of the deceased, under a will or intestacy, does not exceed \$10,000 the same shall be exempt from duty.

FRANCE.

(Hanson, p. 733.)

The principal laws relating to death duties are the following:

- 22 Frimaire, An. VII. 18 July, 1836, s. 6.
- 28 April, 1816, s. 53. 18 May, 1850.
- 16 June, 1824, s. 3. 23 August, 1871, s. 34.
- 21 April, 1832, s. 33. 21 June, 1875.

They will be found under the title "Enregistrement" in Roger and Sorel, "Codes et Lois Usuelles," of which the twenty-sixth edition was published in 1894.